

ON 12-17-2012 D. Sawyer

Julie A. Richards, Clerk  
US District Court  
Eastern District of NCIN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:09-HC-2161-D

UNITED STATES OF AMERICA, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 LEE EDWARD SHELTON, )  
 )  
 Respondent. )

**ORDER**

The United States (“petitioner”) seeks to civilly commit Lee Edward Shelton (“Shelton” or “respondent”) as a “sexually dangerous person” under the Adam Walsh Child Protection and Safety Act of 2006 (“Adam Walsh Act”), codified at 18 U.S.C. §§ 4247–48. Pursuant to the Adam Walsh Act, if the court finds by clear and convincing evidence, after a hearing, that a person is a “sexually dangerous person,” the court must commit the person to the custody of the Attorney General. *Id.* § 4248(d). A “sexually dangerous person” is one “who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others.” *Id.* § 4247(a)(5). A person is considered “sexually dangerous to others” if “the person suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.” *Id.* § 4247(a)(6).

To obtain a commitment order against Shelton, the government must establish three facts by clear and convincing evidence: (1) that Shelton “has engaged or attempted to engage in sexually violent conduct or child molestation,” *id.* § 4247(a)(5); (2) that Shelton currently “suffers from a serious mental illness, abnormality, or disorder”; and (3) as a result of the serious mental illness,

abnormality, or disorder, that Shelton “would have serious difficulty in refraining from sexually violent conduct or child molestation if released.” Id. § 4247(a)(6); see United States v. Caporale, No. 12-6832, 2012 WL 6052021, at \*1 (4th Cir. Dec. 6, 2012); United States v. Wooden, 693 F.3d 440, 442 (4th Cir. 2012); United States v. Francis, 686 F.3d 265, 268, 274 (4th Cir. 2012); United States v. Hall, 664 F.3d 456, 461 (4th Cir. 2012); United States v. Comstock, 627 F.3d 513, 515–16 (4th Cir. 2010), cert. denied, 131 S. Ct. 3026 (2011).

On October 4 and 5, 2012, the court held a bench trial. On December 17, 2012, the court announced its findings and conclusions from the bench. The transcript is incorporated herein by reference. Although Shelton has engaged in child molestation and suffers from a serious mental illness, abnormality, or disorder, the United States has failed to prove by clear and convincing evidence that, as a result of his serious mental illness, abnormality, or disorder, Shelton “would have serious difficulty in refraining from sexually violent conduct or child molestation if released.” 18 U.S.C. § 4247(a)(6). Thus, the United States has failed to prove that Shelton is a sexually dangerous person as defined in the Adam Walsh Act. Accordingly, judgment shall be entered in favor of the respondent, Lee Edward Shelton, and against the petitioner, the United States. The court ORDERS the United States to release Shelton.

SO ORDERED. This 17 day of December 2012.

  
JAMES C. DEVER III  
Chief United States District Judge